

Licensing Objective: Promotion and protection of public health

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The Nicholson Committee Review

The licensing objective for the protection and promotion of public health came into legislation through the Licensing Scotland Act 2005. The introduction of the public health objective into licensing legislation came about as a result of *The Nicholson Committee: Review of Liquor Licensing Law in Scotland*. The 'Nicholson Review' was a major review of liquor licensing in Scotland.

In 2001, the Justice Minister charged the Nicholson Committee with the task of reviewing all aspects of liquor licensing law and practice in Scotland, with particular reference to the implications for health and public order; to recommend changes in the public interest; and to report accordingly (Nicholson Committee, 2003).

The purpose of the review was to ensure that government recommendations around liquor licensing are keeping pace with changes in society.

This review recommended that liquor licensing needed updating. Drinking habits, behaviour and environment have changed significantly since the implementation of the Licensing (Scotland) Act 1976 which followed the last major review of liquor licensing in 1973 (The Clayson Report). There was a general feeling that the legislation needed to be brought up to date in line with modern drinking patterns.

The Nicholson Review took a health perspective in response to growing concerns about health and public order issues arising from over-indulgence in alcohol (The Nicholson Committee, 2003). The report identified the damaging effect of alcohol and the health problems and consequences in Scotland. At time of the review, binge drinking and underage drinking and the associated health harms were particularly prominent. Since that time the problem has shifted to home drinking.

The Review authors were careful to ensure that the introduction of various restrictions did not disadvantage the major of the population who were responsible drinkers. However, they did recognise that the licensing system required updating to take better account of alcohol-related harm experienced.

The review authors consulted with a wide range of stakeholders. The first recommendation from the Review set out that any legislation following the report should set out guiding principles or objectives which are to be the underlying basis for any decisions made by licensing boards. The principles or objectives should be:

- a) The prevention of crime or disorder
- b) The promotion of public safety
- c) The prevention of public nuisance

- d) The promotion of public health
- e) The protection of children from harm

Many of the recommendations of the Nicholson Review have been adopted and were included in The Licensing (Scotland) Act 2005, which was implemented in 2009. The inclusion of the five licensing objectives in legislation is arguably the most important update to licensing legislation in recent time. In particular the inclusion in the Licensing (Scotland) Act 2005 of a fifth licensing objective of protecting and improving public health sets the Scottish legislation apart from that in England and Wales which shares the first four objectives but does not include a health objective at present.

Licensing Boards

A further key development of licensing legislation in Scotland via the Licensing (Scotland) Act 2005 is the requirement for licensing boards to produce statements of licensing policy. There are 40 licensing boards in Scotland which develop statements of licensing policy and make decisions on applications for licences to sell alcohol. As part of the licensing policy statement, licensing boards are required to make an assessment of overprovision and to include a statement on overprovision in the statement (Alcohol Focus Scotland, 2011). Licensing boards are required to consult with health and other partners in the development of the statements of licensing policy and statements of overprovision. Overprovision can be grounds for refusal of a licence application.

It has been reported that there is significant variability across Scotland in terms of licensing policy and decision-making. Legal challenges by applicants to policy-informed licensing decisions have resulted in some high profile cases where the Sheriff has found in favour of the appellant and Licensing Board's decisions has been over turned. A recent example was the refusal by the licensing Board for an application by Aldi in Dundee on the grounds of overprovision. Aldi challenged the decision by the licensing board and the subsequent ruling was in favour of Aldi, and the Licensing Board's decision was overturned with the resulting effect of weakening the Board's policy on overprovision.

It is important to note that health organisations are legitimate partners in the licensing process. Health, Licensing Standards Officers (local authority), Police Scotland, the fire authority and community councils are statutory consultees in the licensing application process as determined in the Licensing Scotland act 2005. As such, health partners receive a copy of applications for new licences and major variations submitted to licensing boards. The statutory consultee is noted as the 'Health Board' in legislation and in practice representatives may include Directors of Public Health, representatives from health promotion or Alcohol and Drug Partnerships.

Alcohol Focus Scotland

In 2011, Alcohol Focus Scotland published a report entitled '*Rethinking Alcohol Licensing*'. The report contained a number of recommendations to ensure that the licensing system in Scotland could give meaningful effect to the public health licensing objective. In 2012 Alcohol Focus Scotland consulted with a wide range of licensing stakeholders on the recommendations and developed a programme of work to assist with the implementation of the recommendations based on feedback. For the last 4 years, Alcohol Focus Scotland has been examining the implementation of the public health licensing objective and input from stakeholders.

This included the development of a toolkit to support the licensing policy development process and work to assist health actors engage more effectively in the licensing process. Evaluation work undertaken by Alcohol Focus Scotland indicates that some positive progress has been made with regards to improved relationships and understanding between licensing and health sectors, with a higher proportion of licensing policy statements making use of health evidence in 2013 in comparison with previous statements in 2010. There was also an increased use of overprovision statements to identify areas that required increased control of the availability of alcohol. Improved engagement of health actors in the licensing system has been evidenced by their participation in the National Licensing Conference and other licensing-related forums.

In 2015, a new piece of licensing legislation was introduced in Scotland via the Air Weapons and Licensing (Scotland) Act 2015. In formulating the legislation, the Scottish Government consulted on many of the recommendations from the 2011 Alcohol Focus Scotland report (*Rethinking Alcohol Licensing*) alongside recommendations and proposals for improvement from other licensing stakeholders. A small number of Alcohol Focus Scotland recommendations were included in the Air Weapons and Licensing (Scotland) Act 2015.

In 2016 Alcohol Focus Scotland consulted with key stakeholders and partners on the progress which has been made since the 2011 report. Alcohol Focus Scotland intends to publish the results of that engagement process in January 2017.

Statements of Licensing Policy

Every three years, licensing boards in Scotland must prepare and publish a statement of licensing policy. The policy statement sets out the general approach a licensing board will take to regulating the sale of alcohol and licensed premises in its areas. The policy statement is intended to provide licence applicants, community members and other stakeholder with an indication of law a licensing board will exercise its discretion in managing the overall provision of licensed premises in its area; its view of opening hours; how it will deal with particular types of application; and the operating conditions it is likely to impose. Measures included in the policy statement must seek to promote the licensing objectives (Alcohol Focus Scotland, 2014).

For a policy statement to be effective.... it needs to be evidence-based, focused on promoting the licensing objectives and be genuinely responsive to the views of consultees, and applied in practice (Alcohol Focus Scotland, 2014).

Following the introduction of statements of licensing policy there was a positive response with licensing boards using good evidence. However, it was reported that the use of available evidence was not translating into decisions on the ground.

Since the introduction of statements of licensing policy, public health actors have had some impact in terms of influencing licensing policy. However, there is evidence that the public health influence is not translating fully to decision-making on individual applications. Subsequently, public health actors are finding it difficult to justify their input when there is no obvious change in outcomes.

It is important to note that licensing boards cannot reduce alcohol availability – only cap it. Licensing boards can only prevent increase in alcohol availability by ‘overprovision’ policy. Licensing boards are required to undertake an assessment of overprovision on their area.

Alcohol Focus Scotland is currently undertaking a review of the progress made by licensing boards over the last four years. Publication of this report is expected in January 2017.

References

Alcohol Focus Scotland (2011) *Re-thinking alcohol licensing*. Available at:

<http://www.alcohol-focus-scotland.org.uk/media/59902/Rethinking-alcohol-licensing.pdf>

Alcohol Focus Scotland (2014) *Review of statements of licensing policy 2013-2016*. Available

at: <http://www.alcohol-focus-scotland.org.uk/media/85184/Review-of-statements-of-licensing-policy-FINAL.pdf>

Report of the Departmental Committee on Scottish Licensing Law, Cmnd. 5354 (The Clayson Report)

The Nicholson Committee Review of Liquor Licensing Law in Scotland (2003) Available at:

<http://www.gov.scot/Publications/2003/08/17590/22947>